

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

DAVID A. DYKE,)	
)	
Plaintiff,)	8:04CV177
)	
v.)	
)	
GARY'S IMPLEMENT, INC.,)	ORDER
)	
Defendant.)	
_____)	

This matter is before the Court on plaintiff's motion (Filing No. 70) for an order vacating the preliminary injunction and cancelling the bond filed in support thereof and to discharge the surety without prejudice. The defendant has responded (Filing No. 71), in which defendant seeks an order dismissing this case without prejudice. The plaintiff has filed a response (Filing No. 73).

The Court has reviewed the respective filings of the parties and has reviewed the history of this case, resulting in the granting of the preliminary injunction (Filing Nos. 24 and 25). The injunction was issued on the motion of the plaintiff and for plaintiff's protection. Plaintiff now seeks to have the injunction vacated, and the Court sees no reason to deny that request.

The present case has proceeded on a progression order with the trial to be scheduled after resolution of the cases pending in Morrill County, and for this reason, the Court

believes it would be inappropriate to grant defendant's motion for an order dismissing this case without prejudice, and it will be denied. Accordingly,

IT IS ORDERED:

1) The preliminary injunction previously issued by the Court (Filing No. 25) is vacated and the surety is discharged without prejudice. The bond issued in support of the preliminary injunction is cancelled.

2) Defendant's motion to dismiss this case without prejudice is denied.

DATED this 12th day of January, 2006.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court